132-161

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. ~~920.~~ 60

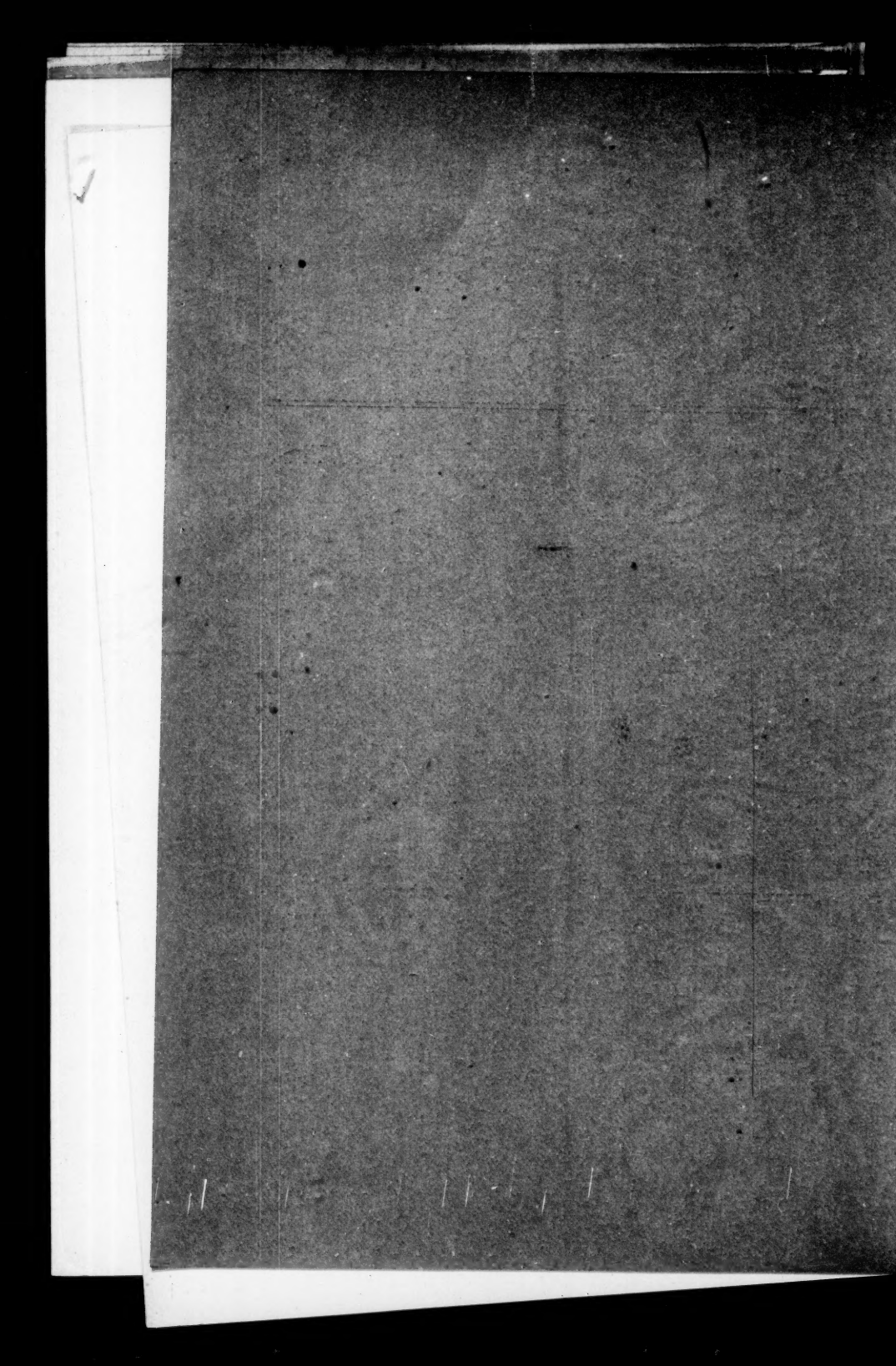
EDWIN A. MERRITT, COLLECTOR OF THE PORT OF NEW YORK, PLAINTIFF IN ERROR,

vs.

CHARLES L. TIFFANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED AUGUST 19, 1886.



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 323.

EDWIN A. MERRITT, COLLECTOR OF THE PORT OF NEW YORK, PLAINTIFF IN ERROR,

vs.

CHARLES L. TIFFANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print.
Writ of error	1	1
Clerk's certificate and return	2	1
Transcript from State court	4	1
Summons	4	2
Bill of particulars	6	2
Complaint	7	3
Certiorari	8	4
Answer	10	4
Minutes of trial	12	6
Certificate of adjustment	14	6
Judgment	15	7
Bill of exceptions	17	7
Testimony of Ralph B. King	18	8
John Q. A. Ward	37	15
Leon Barre	44	17
Joseph Sweitzer	47	18
Thomas Miller	50	19
P. E. Guerin	53	20
Charge to jury	57	21
Defendant's requests to charge	60	22
Assignment of errors	65	23
Citation	67	24
Proof of service of citation	68	24

1 *Writ of error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the records and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court before you, between Charles L. Tiffany, plaintiff, and Edwin A. Merritt, defendant, a manifest error hath happened, to the great damage of the said Edwin A. Merritt, as by his complaint appear', we, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October, eighteen hundred and eighty-six, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done thereon to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 8th day of June, in the year of our Lord one thousand eight hundred and eighty-six.

[SEAL.] TIMOTHY GRIFFITH, *Clerk.*

The foregoing writ is hereby allowed.

WM. J. WALLACE.

2 (Indorsed:) 7519. U. S. Supreme Court. Edwin A. Merritt, plaintiff in error, against Charles L. Tiffany, defendant in error. Writ of error. Stephen A. Walker, attorney for plaintiff in error.

Due service of a copy of the within writ of error is hereby admitted, this day of June, 1886.

HARTLEY & COLEMAN,
Attorneys for Defendants in Error.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

3 I, Timothy Griffith, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from four to sixty-eight, inclusive, contain a true and complete transcript of the records and proceedings had in said court in the case of Edwin A. Merritt, plaintiff in error, against Charles L. Tiffany, defendant in error, as the same remains of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the city of New York, in the southern district of New York, in the second circuit, this seventeenth day of August, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the one hundred and eleventh.

[SEAL.] TIMOTHY GRIFFITH, *Clerk.*

4 *Summons.*

Supreme Court of the State of New York, city and county of New York.

CHARLES L. TIFFANY, PLAINTIFFS,
against
EDWIN A. MERRITT, DEFENDANT.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorneys, within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default, for the relief demanded in the complaint.

Dated New York, December 8, 1881.

HARTLEY & COLEMAN,
Plaintiff's Attorneys.

(Office and post-office address, 62 Wall street, New York City.)

5 (Indorsed:) 2084. N. Y. supreme court. C. L. Tiffany against William H. Robertson. Summons. Hartley & Coleman, pl'ff's attorneys, 62 Wall street, New York City.

6 *Bill of particulars.*

Name of importer (for all the importations), ———.

Description of goods.	Name of vessel.	Whence imported.	Date of invoice.	Date of entry at custom-house.	Date of payment of duties in excess.	Amount of duty illegally exacted.
			1881.	1881.	1881.	
Framed mirror plates	Lessing	Havre	Apr. 22	May 5	May 5	$40.00
Do	Wieland	do	May 6	" 19	" 19	20.00
Do	Westphalia	do	" 13	" 27	" 27	16.00
Do	Cinchia	do	" 20	Jan. 2	June 2	31.00
Do	Herder	do	" 27	" 9	" 9	11.00
Do	Frisia	do	June 10	" 23	" 23	75.00
				1880.	1880.	
Statuary	Suevia	do	Dec. 3	Dec. 18	Dec. 18	31.50
				1881.	1881.	
Do	Republic	Liverpool	Mar. 11	Mar. 25	Mar. 25	195.75

Description of goods.	Name of vessel.	Whence imported.	Protest filed.	Date of appeal to Secretary of the Treasury.	Date of Secretary's decision.	Amount.
			1881.	1881	1881.	
Framed mirror plates	Lessing	Havre	June 20	June 20	Sept. 14	$590.27
Do	Weiland	do	" 20	" 20	" 14	.28
Do	Westphalia	do	July 8	July 8	Dec. 2	.29
Do	Cinchia	do	" 15	" 15	" 2	.30
Do	Herder	do	June 25	June 25	" 2	592.01
Do	Frisia	do	July 11	July 11	" 2	.18
			1880.	1880.	1880.	
Statuary	Suevia	do	Dec. 20	Dec. 20	Sept. 14	632.10
			1881.	1881.	1881.	
Do	Republic	Liverpool	Mar. 29	Mar. 29	" 14	.13

7 *Complaint.*

Supreme court of the State of New York, city and county of New York.

CHARLES L. TIFFANY, PLAINTIFF,
against
EDWIN A. MERRITT, DEFENDANT.

Plaintiff complains—

1st. That defendant was, during the times hereinafter named, collector of customs of the United States at the port of New York.

2d. That plaintiff during said times duly imported and entered at the port of New York the goods described in the bill of particulars annexed.

3d. That plaintiff in order to obtain said goods was compelled to pay the defendant, as such collector, the sum of four hundred and twenty $\frac{25}{100}$ dollars in excess of the said rate and of the amount required by law.

4th. That plaintiff filed with said defendant due and timely protests, in writing, upon each entry of said goods against his decision exacting such duty, setting forth distinctly and specifically the grounds of objection thereto, and also as above stated.

5th. That plaintiff made due and timely appeals on each entry to the Secretary of the Treasury, who affirmed the decision of the defendant.

6th. That the bill of particulars, hereto annexed, states for each importation separately the date of entry at the custom-house, of the payment of duty in excess, of the filing of the said protests, of the appeal to the Secretary of the Treasury, and of his decision thereon, if rendered; together with the other particulars required by law; and is made a part hereof.

7th. That said sum, so exacted as aforesaid, has never been repaid to plaintiff, and is still due and owing to him.

Wherefore plaintiff demands judgment against defendant for four hundred and twenty $\frac{25}{100}$ dollars with interest on the several sums named in the bill of particulars from the several dates of payment as appear thereby, together with the costs and disbursements of this action.

HARTLEY & COLEMAN,
Attorneys for Plaintiff.

(Indorsed:) 2084. Supreme court city and county of New York. Charles L. Tiffany against William H. Robertson. Complaint and bill of particulars.

Due service of a copy hereof is hereby acknowledged this 22 day of Dec., 1881.

S. L. WOODFORD,
U. S. Atty, Atty. for Deft.

Hartley & Coleman, pl'ff's attorneys, 62 Wall street, New York City.

---

8 *Certiorari.*

The President of the United States of America. To the judges of the supreme court of the State of New York, greeting:

We, for certain reasons, being desirous that our circuit court of the United States for the southern district of New York, in the second [L. S.] circuit, shall be certified of a certain cause commenced before you against Edwin A. Merritt, defendant, by Charles L. Tiffany, plaintiffs, do therefore command you that the record and proceedings in the said cause you distinctly and openly send to the said circuit court, at the city of New York, on the 14th day of January, 1882, as fully and amply as the same are remaining before you, by whatever names the said parties may be called therein, together with this writ, that our said court may cause to be further done thereupon what of right ought to be done.

Witness, Morrison R. Waite, esquire, Chief Justice of the Supreme Court of the United States, the 10th day of January, in the year one thousand eight hundred and eighty-two.

JOSEPH M. DEUEL, *Clerk.*

STEWART L. WOODFORD,
United States Attorney, Attorney for Defendant.

9 (Indorsed:) 7519. U. S. circuit court. Charles L. Tiffany vs. Edwin A. Merritt. Copy certiorari. Stewart L. Woodford, U. S. attorney, attorney for defendant.

Take notice that the within is a copy of a certiorari this day issued out of the circuit court of the United States for the southern district of New York.

New York, January 10, 1882.

Yours,

STEWART L. WOODFORD,
U. S. Attorney, Attorney for Defendant.

To HARTLEY & COLEMAN,
Plaintiff's Attorneys.

10 *Answer.*

United States circuit court, southern district of New York.

CHARLES L. TIFFANY
versus
EDWIN A. MERRITT, COLLECTOR, ETC.

The answer of the defendant herein, by Stewart L. Woodford, his attorney, to the complaint of the plaintiff in the above-entitled action.

I. He admits he was, at the times in said complaint mentioned, collector of the port of New York, and, in such official capacity, received payment from the plaintiff for and on account of duties due to the United States, under the laws thereof, upon certain importations of merchandise imported by said plaintiff into the port of New York from foreign countries.

II. He alleges that any and all moneys received by him from plaintiff, at the times in said complaint mentioned, were paid by said plaintiff as a debt due by him to the United States, and not otherwise; and were received by defendant by virtue of his office as said collector and under the direction of the Secretary of the Treasury, and for and on account of the United States, and were forthwith thereafter and before the commencement of this action, or the service of any protest, paid into the Treasury of the United States; and that the amount of said moneys, so received from plaintiff, were the amounts due from him to the United States, according to the rate of duty imposed by law upon the several articles of merchandise by him imported and assessed with the duty, and no other sums than duties regularly assessed, and ascertained and liquidated according to law upon the plaintiff's import entry thereof were collected or received by defendant from the plaintiff.

III. And defendant further answering denies that he has at this time sufficient information to form a belief as to the precise description of the merchandise contained in the several packages referred to in the said complaint, by the marks, and numbers, and description there given, except in so far as to state, and defendant herein answering doth aver and state, that said merchandise was not dutiable according to the laws of the United States, at the rates specified in the complaint.

IV. And defendant further answering admits that plaintiff filed with defendant certain protests, but he denies that he has sufficient information to form a belief as to whether, upon the importations in question, protests and appeals were made by the plaintiff, conformable to the laws of the United States, and defendant leaves plaintiff to make such proof thereof as he may be advised.

V. And as to any other allegations in said complaint contained, not hereinbefore fully answered or admitted, defendant denies the same, and each thereof, and leaves the plaintiff to make such proof thereof as he may be advised.

Wherefore defendant demands judgment, that the complaint be dismissed with costs.

STEWART L. WOODFORD,
United States Attorney,
Attorney for Defendant.

11 SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss:

Edwin A. Merritt, being duly sworn, says that he is the defendant above named, and that the foregoing answer is true to his own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

Sworn to before me this day of 188 . , notary public, New York County.

(Indorsed;) 7519. U. S. circuit court, southern district of New York. Charles L. Tiffany vs. W. H. Robertson, collector, etc. Answer. Stewart L. Woodford, United States attorney, attorney for defendant. Hartley & Coleman, plaintiff's attorneys.

12 *Minutes of trial.*

At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court rooms, in the city of New York, on Wednesday, the 20th day of January, in the year of our Lord one thousand eight hundred and eighty-six.

Present: The honorable Nathaniel Shipman, sitting as circuit judge.

CHARLES TIFFANY *vs.* EDWIN A. MERRITT. } 7519.

Now comes the plaintiff, by Hartley & Coleman, esqs., his attorneys, and moves the trial of this cause; likewise comes the defendant, by Henry C. Platt, esq., ass't U. S. att'y, his attorney; thereupon a jury is empaneled and the cause proceeds to trial. After hearing the evidence of the parties, the argument of counsel, and the instructions of the court, on Thursday, January 21, 1886, the jury retire, and on their return render a verdict whereby they find for the plaintiff. Counsel for the respective parties stipulate in open court that the amount of the verdict shall be adjusted at the custom-house, under the direction of the court.

13 It is ordered that a certificate of probable cause be entered herein, and that the defendant have a stay of all proceedings on said verdict for thirty days.

A copy.

TIMOTHY GRIFFITH, *Clerk.*

---

14 *Certificate of adjustment.*

United States circuit court for the southern district of New York.

N. S. 7519.] CUSTOM-HOUSE, NEW YORK,
Collector's Office, June 5, 1886.

CHARLES L. TIFFANY *vs.* EDWIN A. MERRITT. } Verdict dated Jan'y 21, 1886.

SIR: The adjustment in the above case is as follows:

Amount overpaid	$455.90
Interest added to Jan. 21, 1886	132.21
	588.11

Respectfully,

ARTHUR PERRY,
Sp. Dep. Collector.

To the CLERK OF THE UNITED STATES COURT
for the Southern District of New York.

15 *Judgment.*

Therefore it is considered by the court now here that plaintiff recover of said defendant five hundred and eighty-eight $\frac{11}{100}$ dollars, the amount of said verdict as adjusted at the custom-house, together with thirteen $\frac{52}{100}$ dollars interest upon said verdict since the date thereof, together with fifty-nine $\frac{85}{100}$ dollars costs, amounting in all to the sum of six hundred and sixty-one $\frac{48}{100}$ dollars.

And it is certified that defendant had probable cause to make the exacti'n complained of.

Judgment signed this 8th day of June, 1886.

JOHN A. SHIELDS,
Deputy Clerk.

Judg't	$588.11
Interest	13.52
Costs	59.85
	661.48

16 (Endorsed:) U. S. circuit court, southern district of New York. Charles L. Tiffany vs. Edwin A. Merritt. Judgm't roll. Hartley & Coleman, att'ys for plffs., 62 Wall st., Ne' Y'rk City. U. S. circuit court. Filed June 8th, 1886. Timothy Griffith, clerk.

17 United States circuit court, southern district of New York.

CHARLES L. TIFFANY
vs.
EDWIN A. MERRITT, COLLECTOR. } N. S. 7519.

Bill of exceptions.

That afterwards, to wit, on the 20th and 21*th* days of January, 1886, this case come on for trial before the honorable Nathaniel Shipman, district judge of the United States for the district of Connecticut, duly assigned to hold this court, and a jury duly empannelled and sworn to try the issues herein.

The parties appeared by their counsel, Hartley and Coleman, and Stephen G. Clarke, esq., for the plaintiff, and Henry C. Platt, esq., for the defendant.

The plaintiff, by his counsel, having opened his case to the jury, produced evidence tending to show that the plaintiff imported certain articles of bronze statuary, per the Suevia, December 8, 1880, and per the Republic, March 26, 1881, upon which the defendant, as collector of customs at the port of New York, assessed a duty of 45 per cent. ad va-
18 lorem, under Schedule E of the Revised Statutes of the United States, approved June 22, 1874 (Heyl, 1057), as a manufacture of copper, which duties were paid by the plaintiff, and the plaintiff duly protested and appealed, claiming that such goods were only liable to a duty of 10 per cent. ad valorem, as provided for under Schedule M of the Revised

Statutes, as statuary not otherwise provided for, and that such goods were the professional productions of a statuary or of a sculptor (Heyl, 1349). That this suit was brought within the time required by law to recover the alleged excess of duties paid to the defendant.

RALPH B. KING, a witness produced and sworn on behalf of the plaintiff, gave evidence tending to show that he had been with Tiffany and Company for fourteen years, in the city of New York.

Q. I show you the invoice by the Republic; be good enough to look at the goods marked T. & Co., 6069, at the beginning of that invoice.—A. Yes, sir.

Q. Order number 358; Bernard Pallisy; net value, 1425 francs. Can you describe what that article is?—A. Bernard Pallisy was a figure
19 by Barrias; Barrias is one of the best sculptors we have, who lives in Paris. This figure was a little over two feet high, if I remember right. It has been considered a work of art. It is bought as a work of art. It is manufactured by Barbedienne; that is, Barbedienne employs Barrias to produce the model for him, and Barbedienne produced it. In the manufacture of this figure it requires not only an artist in modeling, but it requires an artist in chasing. The figures are chased in two different ways. Sometimes the figure requires very delicate finishing, such as the chase of wrinkles and lines of the face, and then there is a way which is called rivet finishing.

Q. That is done by Barbedienne?—A. That is done by artists whom he employs.

Q. Will you describe the process in other respects?—A. The figure of Pallisy is a standing figure, if I remember right, and is looking down upon a model. Pallisy was a modeler in a pottery, and he was looking over some pottery that he had been producing.

Q. Is Barbedienne an artist?—A. He is not an artist that I know of. I have never been in Paris, but I have always understood that Barbedienne was a great appreciator of art, and has the finest collection of art in the world. His collection consists of classical subjects, such figures as the dying "Gladiator."

20 Q. (Referring to statue in front of witness.) This is made from the model of whom?—A. Barrias. He is a sculptor. The invoice price of Pallisy was put down at 1,425 francs, net. I suppose about three hundred dollars.

Q. What is the probable weight of that figure?—A. I think that figure, perhaps, would be, say, between fifty and seventy-five pounds. I would not like to say positively.

Q. The next figure I ask you to look at, No. 329; you will see two Roman gladiators, net price two thousand francs?—A. Those figures were by Guillemin; those figures were modeled by a sculptor who makes his own bronzes. He has a foundry as well.

Q. Is he a recognized sculptor?—A. Yes, sir; claims he is a sculptor.

Q. Coming down to case No. 6072; I see one Penelope; do you know what that was?—A. That was a small figure.

Q. Do you know the author of it?—A. No; I do not remember the name of that author.

Q. You don't know in regard to his character?—A. It was an artistic piece in its treatment all through, the figure is treated as an artistic figure.

It was mounted on a little base and the whole thing was really ar-
21 tistic. Underneath I see a Meadeleine, and under that a group Retour des Champs; the Madeleine was by Madrazzo. Madrazzo was the *was the* name of the sculptor. That piece (the group) I think the character was taken from an opera, one of the greatest operas that came out in Paris. It represents a scene in the opera of a man with a woman in his arms. But I don't know what part of the opera it is in; but that is the character. The next is the Retour des Champs, that is the Return from the Fields. One of them has a sickle or scythe in hand, and a cluster of grain of some kind. I don't remember the name of that author, I think it was Moreau. I wouldn't say positively. He is a sculptor, yes, sir; all those are sculptors.

No. 331. One series are reproductions; they are very small. They are reproductions in bronze of a class of those figures from Pompeii; those figures are some of the same kind now in our Metropolitan Museum of Art.

No. 351. Dona Sol is a bronze bust. That was modeled by Marcy, the same artist who modeled that figure of David; the treatment is artistic in character, the whole treatment; the whole treatment of the hair *of the hair* and the arrangement of it.

Shakespeare, 364, is the best illustration of Shakespeare that has
22 been made by any artist. I don't know who the sculptor is; the sculptor's name isn't on it, but Barbedienne is the producer, the publisher, the editor. It is an original work.

The next case, No. 360, Venus de Milo, was made by the same artist who produced the David. Those figures are Grecian; they were made originally by an artist about 400 years B. C.

Q. Do you know where this clay model comes from?

A. The artist isn't known. The clay model is reproduced by Barbedienne.

Q. By himself, or by an artist?

A. By an artist in his employ.

361. The two Mercuries. The greater is called the Barrias Mercury.

Q. I see another, Bernard Pallisy, 1,100 francs. That is the same as the other, 1,100 francs?—A. It is the same thing only of a size smaller; we had those in three sizes.

By the same artist?

A. The same artist; the larger size we now have in the store.

Q. The next is David before the Combat?

A. This is the figure [pointing to one on the judge's desk]. The sculptor is Merci, and Barbedienne is the editor. That has been considered and bought by every one who has ever bought it as a thorough
23 work of art; [pointing to the said figure] that is the smallest size.

Q. And the price of this was 500 francs?—A. Would be for that size; that price is $200.

Q. Now, as we have a sample before us, can you illustrate from that the particular things that belong to the work of the editor as contradistinguished from the sculptor?—A. Well, I don't know that the editor would have anything to do but what the sculptor would do. The editor would say, "I wish this piece produced," and the sculptor would do all the artistic treatment.

The production of the statue is done by the three artists employed. The first artist models it; then comes the artist who moulds it; and then the editor would employ an artist to mould it and also an artist to chase it. That would be the work of the editor who employs these other two artists, one to chase and the other to mould.

Q. The editor's work in reproducing is to hire somebody else?—A. To hire some body else; yes, sir.

Q. How does that come out originally from the clay mould when it is cast?—A. It comes in sections, in pieces, and is put together in such
24 a manner, using solder of the same metal, so it doesn't show at all when put together. The surfaces in these bronzes, if you take off these surfaces, will be of a copper color, that is its original color, and if you strip that figure you would find it would come out a regular copper color. When it comes out rough, and then has to be chased. It has to be chased off by the chaser, and he gives it this delicate skin.

Q. He follows the model?—A. He follows the model and brings it out more perfectly. There is more or less imperfection from sand, from these moulds, and the chaser has all that to take off himself; and if he isn't an artist himself he would perhaps ruin the sculptor's design.

Q. Look at that invoice No. 332, I, Flora and Love?—A. Flora and Cupid, I suppose is the character.

Q. What is that?—A. Well, I can't remember the description of that so well in that piece. I can't describe that piece, but I remember the character as being Flora and Cupid. Flora is the goddess of flowers, and Cupid is associated with her generally in grouping.

Q. Now I show you an entry by the Servia; in case No. 5995,
25 order No. 949, I find four statues Mercury; do you remember those four statuettes of Mercury?—A. Yes, sir; those were the Mercuries. They were—I think that is a new Mercury that we had about that time. It is a reproduction of the Barrias Mercury. It is smaller in price than the one we had before. It is an artistic production.

Q. Now look at 5997; also another mercury, No. 9227?—A. That is the same class of figure there, same treatment, and the same price.

Q. Will you state what is the course of business in regard to making the statuettes of the ordinary sculptor from the beginning?—A. The first thing he casts his clay model. He has first to conceive the idea, and then he makes his model. That model is taken and a plaster case is made from that, and the plaster cast is divided into sections, then cast in sections and then the mould is made and the metal poured in.

Q. Who does this work of pouring in this metal?—That is mechanical, you know; it is done by a man accustomed to handle the metal in its molten state.

Q. Is it done under the sculptor's direction or done by him per-
26 sonally?—A. Done under his direction.

Q. In regard to marble statues, how is it?—A. A marble statue is made in the same way, sir; he first makes the clay model exactly as in a bronze, and then from that he makes his plaster model, because you can't keep a clay model long unless you keep it wet. And as soon as his model is completed he makes a plaster model from his clay, and then if he is going to make a metal figure, then that is put into more competent hands for the purpose of making the figure. In the case of a marble statue it is a

square block of marble, and it is marked out and pierced to bring out the form of the body and you have the figure.

Q. Who does that?—A. Sometimes he does it himself; there are a good many artists who cut their own models, but generally they employ artists who are not so good at modelling themselves.

Q. Have they any particular name?—A. No, sir; except called sculptors. They can't design for themselves so well.

Q. And do artists frequently make copies of their productions?—A. Yes, sir; unless there is an understanding that there is to be no
27 reproduction.

Q. How many can be reproduced from this model?—A. To reproduce them they have to make a new mould in making every one. It is just the same work in making those or any other.

Q. The mould has to be broken every time?—A. Broken every time; yes, sir.

Q. But the model is left?—A. Yes, sir; the model is left there.

Q. Then they can make them as long as the model lasts?—A. The model never wears out; there is nothing but the most delicate sand that is put against it. Take a plaster model, and nothing is put against it but the most delicate sand, and there is nothing to wear it out.

Q. In point of fact, how are these reproductions in bronze made? It depends entirely upon whether a sale can be made; if the piece is desirable and if a sale can be made, the piece can be reproduced if the editor owns the piece?—A. Yes.

Q. I understand you the people employed by this editor are artists?—A. Yes, sir.

(Upon cross-examination this witness gave evidence tending to show that he was not a sculptor or statuary.)

28 Q. Were you ever present to see a statue made?—A. Yes, sir; in this country, at a factory in Fifteenth street, where most of our work is done.

Q. Was the artist who made the model present at the time at that factory?—A. No, sir; the artist was not there. The piece I saw moulded I had moulded for myself. I had it made, and I examined it made, and I examined it while it was being made.

Q. Who modeled it?—A. It was modeled by Mr. Valentine, of Richmond, Virginia. The bust was a bust of Beethoven. It was a bronze bust. It was modeled originally by an artist. Then I took it to this foundry. That is not the extent of my experience; I have had experience for fourteen years in metal work. I have been in the business in that particular department with Tiffany and Co. I have been in other foundries—Bonnard's foundry, in Houston street. I have seen them in the process of chasing. I have seen them in the process of removing the marks of the mould off the figures. I saw the artist who modelled the figure in the process of chasing. I don't know his name. I know he was an artist, because no one but an artist can take a piece of
29 bronze metal and chase it without ruining the product of the sculptor. I have had pieces spoiled by men who were not artists. Occasionally I find men there who are not artists. You put a workman on a piece of bronze when you can't get an artist to do it and you will see the result of it. The man who employs the men in Barnard's foundry, in

Houston street, is Mr. John Williams. I have never been personally acquainted with the artist himself. In those factories that I have mentioned a great variety of other metal work was manufactured—bronze stands and lamps, chandeliers, bases for clocks, and a great variety of ornamental work, and gas-fixtures. The same artist of whom I spoke did not work on these various other articles. They couldn't put such men on that kind of work; it would make it too expensive. Those men get very high salaries, and you can't put a very fine model-chaser or metal-chaser on gas work. Tiffany and Co. employ more than one chaser.

Q. Do you call those artists?—A. Some are artists and some are not. My definition of an artist is a man who could take a piece and make a design. In the first place, a man who can conceive a design, and
30 any man who is capable of executing that design.

Q. Then, the man who chased those articles there (the samples), does he conceive the design?—A. Yes, sir; that man can do so—the man who did that work.

Q. Does he conceive the design of that figure, when he simply polishes it?—A. He conceives the form of the figure; he doesn't originate it; but he is so familiar with the figure as an artist or as a statuary that he knows where his tools ought to go to carry out the design of the skilled sculptor. A skilled workman couldn't do it; he must be an artist. But it doesn't require a skilled artist to make gas-fixtures. Some of the models are made in soft bronse or metal. It is called spelter. That isn't as high art as the other; you can put a boy at spelter; you can use the same mold a great many times. That is the reason why spelter is so cheap. You don't require a new mold every time a figure is made in making spelter. These articles were made in Paris. I have never been in Paris. All I know has been my fourteen years' experience in the bronze department of Tiffany and Co. I haven't seen these identi'al pieces in suit made.
31 I have never seen anything of the kind made in Paris. I have seen them made here. We sell these articles here. We make a number of them. We make some figures and some busts. We have them made at Mr. Williams' place.

Q. And from where do you get models?—A. One model was from Richmond, Virginia, by Mr. Valentine, the sculptor; he was the artist who made the model. We have had some pieces made by Mr. Ball, of Newburgh. We have a bronze model that he had made—a cow. The material of the silvered model produced here is bronze, silvered; price, $280. The David Before the Combat is $200; that is made of bronze; the color on the outside is an artificial color.

Q. Is that the work of an artist—the artificial color?—A. No, sir; just a skilled workman. A great many of those figures are sold in this country, reproduced in large numbers, according to the demand; not only so by our house, but by other houses.

Q. Did you ever see a model from which those figures were made?—A. These figures were made in Paris, and I have never been there.

Q. Do you know of what materials the models are composed?—A. I have never seen the model, and I can't tell.

32 By Mr. CLARKE:

Q. Do you know the artist who produced that silvered statue?—A. I know him by name, Barrias; he is a professional sculptor.

By Mr. PLATT:

Q. I find in Webster here a definition of the word artist: "One who professes and practices one of the liberal arts, in which science and taste preside over the manual execution." Do you consider that a fair definition of the word artist?—A. Yes, sir; that is a good definition.

By Mr. CLARKE:

Q. In these reproductions from the designs of living artists they usually have a royalty on each reproduction that is sold?—A. I don't know how that is, sir; it depends a great deal upon the terms upon which they are bought; sometimes they are bought out and out, and some times at a royalty; sometimes sold to reproduce, and sometimes sold not to reproduce.

By Mr. PLATT:

Q. When the artist sells a model has he anything more to do with it?—A. I suppose not; I should think that ends his connection with that figure, unless he makes some other arrangement.

The plaintiff also produced as a witness John Rogers, who, being
33 duly sworn, gave testimony tending to show that he was a sculptor, having his studio at 860 B'way, in the city of New York; that he had been a sculptor for twenty-five years in this country and abroad, and had produced original works.

Q. Will you describe the method of producing statuary as far as the sculptor's work goes?—A. The design is set up in clay and modelled out in clay; afterwards mould is made on that, and it is reproduced in plaster. From that it can either be put into bronze or in marble.

Q. Suppose it is desired to produce it in bronze, what is done then?—A. It is the same process; it is modeled in clay and then a plaster copy is made and it is finished up carefully, and it is cut into sections; it is necessary to cut it in sections; and it is then sent to a bronze factory, and there they mold it in sand and put the parts together and finish and chase it up.

Q. Is it the work of the sculptor, the bronzing and making of the bronze statuary?—A. It is mechanical work; it isn't done by the sculptor; it is a reproduction of his work, you know. That reproduction is regarded in the profession as the sculptor's work.

34 Q. As far as you know it to be an exhaustive definition of the term, what is a sculptor?—A. Well, it is generally considered one who modeles in clay, and a statuary is very much the same kind, I think. The clay model, when it is reproduced, is destroyed; it can't be kept. It shrinks, and afterwards it is impossible to use it; it would crack all to pieces. My own statuary is made in clay, then a plaster copy is made from that, and then a bronze copy is made from that, and that bronze copy is used for making moulds to reproduce them again; and I reproduce them as often as I have orders for the same subject. Those are my original works; those are the Rogers groups that are familiar—the groups that I make.

Q. Will you please examine the statue before you and state whether, in your opinion, that is a work of art?—A. Yes, sir; I should consider it so.

Q. The production of a professional artist?—A. Yes, sir.

Q. (Referring to the Dying Gladiator.) How about this?—A. The same answer.

Upon cross-examination this witness testified that the original
35 design is made by the artist in clay and then from that a plaster copy is made; that the plaster copy is supposed to be a perfect, artistic representation of the idea, in every way complete, and represents the design of the artists themselves.

Q. Does the sculptor or the artist himself work in producing that [referring to a sample]?—A. Not often; no, sir.

Q. Is the same true in the case of the statuary?—A. Generally so; yes, sir; you mean in marble?

Q. Yes, sir; in marble or stone?—A. Generally that is done by workmen; the rest of the work is mechanical.

Q. (Referring to sample.) You say this is the production of a professional artist; isn't that made from a clay model?—A. Originally, yes, sir.

Q. And the work of casting that into bronze is done by whom?—A. It is done by workmen; done in a bronze manufactory; it is a reproduction of the orignal work, no doubt.

Q. And that is mechanical work?—A. It is mechanical. In casting those bronze figures they are cast in great numbers and put upon the market in large numbers if there is a demand for them. And the artist or the statuary or the sculptor leaves that work after he has made
36 his plaster model, and the rest of the work is done by mechanical men. I am acquainted with some of the living sculptors of the day. I knew Ball years ago. I haven't seen him for a good while; he is a sculptor. I think he has done some work in marble and in bronze; he has generally done large work. I don't think he has reproduced many; he has some. He made the statue of Daniel Webster and one of Henry Clay twenty-five or thirty years ago, which were reproduced.

Q. How many times?—A. Oh, I can't tell that; I only know we had copies for sale. Mr. Ward, the sculptor, hasn't done much small work—mostly large work. The reproductions are mostly small works. They are usually small, because there isn't much demand for the large. I don't recollect any in the market of the works of Mr. Ward that has been reproduced. I know Powers. Met him once. He was a statuary, or sculptor. He modeled the Greek slave. That was reproduced in quite a number; I couldn't tell how many. They were reproduced in various sizes—quite small statuettes up to the size of the original. I don't know whether he was responsible for the small ones, but he probably was
37 for the large ones. For all I know, he was responsible or had charge of the reproduction in the market of the small ones.

By Mr. HARTLEY:

Q. The work that goes on after the clay model is made; isn't that the same whether it is produced by an artist or by anybody else after the model is made?—A. It is mainly mechanical, but it is as nearly an exact copy of the first work as possible; mainly the work of the professional who conceived the first idea.

By Mr. PLATT:

Q. When they are produced by mechanical men?—A. You may call

them so. It is the artist's idea, but they are all reproductions, first from the clay to the plaster, and then from the plaster to the bronze, and from the bronze to anything else.

Q. The same as gas-fixtures or any other articles that are cast, so far as the mechanical work is concerned?—A. Yes, sir; so far as the mechanical work is concerned?—A. Yes, sir; so far, so far as the mechanical work is concerned to reproduce it.

The plaintiff also produced as a witness JOHN QUINCY ADAMS WARD, who, being duly sworn, gave testimony tending to show that he
38 was a sculptor, and had been since 1850 or 1851. Some of his principal works were the statue of Shakespeare in the park, the Indian Hunter, the Seventh Regiment Soldier, the Pilgrim, and the statue of Washington down in Wall street; also a group known as the Good Samaritan in the Boston Garden. His was chiefly in bronze for out-door work.

By Mr. HARTLEY:

Q. I show you these three samples; please examine those and see whether you can't tell from the statues whether they are the professional productions of an artist?—A. The word professional bothers me. I should say those were works of art, certainly; I should not hesitate in that. They are in bronze.

Q. Can you describe how these goods are made?—A. First there is a model made; after the permanent model is made, either in wax or plaster, then the usual process of casting in a sand mold is gone through with; that is a difficult thing to describe, but probably the gentlemen are all familiar with the process. It is a sand-mold process; they use fine sand, loam sand, or plaster, the mold is made in pieces. After it is carefully made it is put in the oven and baked. Of course the
39 mold process is very difficult to describe, especially to gentlemen not familiar with the process. After the mold is made and thoroughly baked, then the metal is melted and poured in; after that the mold is destroyed and the bronze figure recovered from the mold; then, in a general way, the so-called seams, where the pieces of mold come together, have to be cleaned off, and there may be more or less chasing done on the work; that is a question of taste, or the wish of the person who has charge of it, or the artist. The person's professional name, if he has one, who makes the mold is called a sculptor. We have no better word than that.

Q. Is his artistic labor complete, so far as he is concerned, when the model is made?—A. It may or not may be; truly the expression of the work is finished; he may wish to superintend the final finishing of it, but it may not be necessary. It certainly would not affect it as a work of art. As a work of art the finishing of a clay model makes it complete. The statues that are cast from this clay model are his professional productions. It is not absolutely necessary for him to superintend it. In bronze
40 these copies are frequently produced from the original mold or from the original model; and that oftentimes is a source of income to the artist.

Upon cross-examination this witness testified that in making the statue of Shakespeare in Central Park, after gathering his material and data upon

which he based his conception of the subject he made a small study, or sketch, and then he modeled the large figure. The small sketch was in plaster; the model was in clay; and he put the clay model in plaster to give it a permanent form, as it will not stand in clay.

Q. And from that plaster sketch or model what is made?—A. It only serves as an idea. In my own case I don't always pay much attention to the small statue; I may change it; may make it better; might, unfortunately, make it worse. I don't confine myself to the sketch absolutely, except as to the main idea.

After that I set up the clay model, full size. That I do myself, or through my assistants under my direction. After the clay model is furnished I cast it in plaster, getting a permanent model in plaster. That is done
41 under my personal supervision. Then it is sent to the foundry.

Q. Does it leave your supervision at that point?—A. In my case I superintend to the final finishing of the whole work, and that was the case with my particular bronze statues that have been referred to; I superintended the casting in the case of Shakspeare. We give directions to the finishing men simply to repair. We don't chase the large work that go out doors. I don't allow any work other than the necessary cleaning off the seams and what is called repairing. The repairing is done at the foundry under my supervision, so that my work from the beginning to the completion is either done by myself or under my supervision. The work on the Equitable Building, over the entrance, in marble, is mine; in that case I made a model one-half size, I think it was, and sent one of my assistants to Carrara, in Italy, and had it produced there. In that case I gave no personal superintendence. I gave him certain directions with reference to the effect, and didn't see it until it arrived in this country. There were some little retouchings afterwards.

It was produced from my model; I gave him certain suggestions
42 about enlarging the same. The Good Samaritan in the Boston Garden is in granite; in that case I made a model full size and sent it to Boston. I wouldn't agree to put it in granite, not believing much in granite myself. They had it executed in granite themselves, but I visited Boston twice to see the result. I described the process which I gave. Visited Boston twice; once when it was almost complete, and after its completion. I don't remember whether at such time I made suggestions; I can't remember; it is a long time ago. The Indian Hunter in the park was carried through by me, or by others from my suggestions or directions, in the same way as I have described. And the Seventh Regiment Soldier was done in the same way; and that is the case with all my works I have described. I don't know that that course is pursued by other sculptors and statuaries; I only speak for my own case. I am not familiar with the works of the kind of which you have samples here. I only have a vague idea of how those are made. Am not familiar with the establishments or the artists who produce them. I can say that they have
43 been chased—finished differently—from what we do large works. I can't say that I am very familiar with works of that kind in this country and abroad. I see them; I see these things in private houses and in the stores. Very likely there are several copies of the same work. If this is bronze, which I presume it is, the same process must be gone through with in producing each statuette. It may be a plaster model that is used

in producing the cast. In a case where many copies were made of a statuette they would make one bronze model carefully, they would cast and finish it carefully, and then they would make their other molds from them, because they can handle the sand closer and get a much more perfect cast, and it will require much less chasing. The bronze model that I speak of could be used any number of times—many thousand times. It would be a great economy to the founder or producer to have a bronze model where a large number of the works of the kind are produced; it is usually the case; they have a model of bronze or plaster. In producing a large number of copies it would require more labor to the chaser and finisher to finish one from a plaster mold than from the bronze mold, for the reason
44 I gave. The plaster mold or model might be broken slightly, or with care preserved. I have plaster models that have been used often. I remember Crawfords group of statuary at that Capitol at Washington; the one on the pediment, each side. Mr. Crawford was dead before the pediment was finished. I should say of Mr. Crawford as a sculptor, that that was his production, he being dead at the time. There are perhaps twenty-five or thirty figures in it. It is a group of philos'phers.

The plaintiffs also produced the deposition of Leon Barre, taken de bene esse, and admitted by consent, which deposition tended to show that he was a salesman and buyer for the plaintiff, and had been for sixteen years; that he had purchased bronze statuary for the plaintiff in Europe since 1880; was acquainted with bronze statuary as a commercial article. (Witness was shown the invoice and entry per Republic, named in the bill of particulars in this suit, and identified the same). He states:
45 I purchased the articles named on the invoice and am acquainted with the same. I find on the invoice, case 6069, a bronze statue of Bernard Pellisy; it is about two feet high; a seated figure; it is the reproduction of a well-known subject. I don't know who the author of the original is; I am able to state from my acquaintance with the subject whether the model from which this statue was made was made by an artist or statuary. The method of production of bronze statuary abroad is as follows: The artist or statuary first conceives a design; he puts it on paper; he studies his subject historically, and then makes a clay model; from that clay model he makes a plaster one which he either sells to a founder or reproducer, who is technically called an editor, or else he edits it himself. I do not remember the artist of the Bernard Pellisy, but it was edited by Viets, of Paris. The editor must for the purpose of reproduction either use the clay or plaster model of the statuary. That was so here. I find next two Roman Gladiators on this invoice. The original model of
46 that was made by Guillemin and edited by him, and manufactured under his immediate personal supervision. He is a well known sculptor and statuary, and these are his professional productions. I find next the statues of Penelope, Madeline, and the Retour des Champs, and busts of Delilah and Shakespeare. The busts are cast by Barbedienne. He is the most noted founder of bronze statuary. The others are cast by David, who is also a superior founder. I don't know what artist made the original clay model in these cases. I find also on the invoice a Venus de Milo, and Mercury, and David before the Combat, and a Bernard Pellisy, all cast by Barbaadienne. The original artist is unknown to me. Barbadienne is a maker of statues. When a sculptor has produced

his clay model, unless he is himself an editor, he expends no further work on the subject; but all subsequent processes of founding, chasing, and finishing are done by the editor. This is artistic work. There is another way of making bronze statuary, but the statues in this suit were made as I have stated. The Love and Flora, in case 6077, was made by
47 Basset; that is, he was the editor. In other respects *in* was like the first. I identify the entry per the Suebia named in the bill of particulars; in case 5995 there are four statu'ttes of Mercury; in case 5997 there is another, and they are the same in manufacture as the Love and Flora. In all cases of editing it is absolutely necessary for the editor to have and use the model of a sculptor.

Upon cross-examination this witness gave further evidence tending to show that, with the exception of Guillemin referred to, the only other sculptor is Basset; all the others are editors. The witness states: I know Basset to be a sculptor; I have seen his models. He did not make the mod'ls for the Love and Flora. Any number of reproductions in bronze can be made from the artist's model without any further work of the sculptor.

The defendant, after opening his case to the jury, produced as a witness Joseph Schweitzer, who, being duly sworn, gave evidence tending to show that he was the manager of the Ansonia Clock Company, No. 11 Cliff street, New York City; that he had been engaged in the
48 business for eleven years, and during that time engaged in the manufacture of bronze statuettes. The witness states: We manufacture about 40,000 figures per year, ranging in size from ten inches to thirty-six and thirty-nine inches; some similar and some larger than the sample produced. I am familiar with the process of their manufacture.

By Mr. HARTLEY:

Q. Are they works of art, produced by artists?—A. No.

By Mr. PLATT:

Q. What are they produced from?—A. Produced from the real bronze figures, which come chiefly from Paris.

Q. State the process by which they are made.—A. We make a plaster of Paris model of it; when the cast is in brass we chase the cast out, and it forms a mold; and this mold we fill with metal, and the metal so put into the mold is taken out and chased on, and then it is colored according to the color that is wanted. The figures are first chased and then colored. The originals may be made from models coming from the other side that are in bronze, and the plaster model is made from that. The
49 reproduction is made from a brass mold.

Q. By what name do you call men who do this work?—A. There are different branches. We have chasers who do chasing on the rough cast when it comes out of the mold; we have other chasers who chase the brass mold itself. Of course when the impression is taken from the figure imported from the other side it is cast in bronze, and this cast is chased out, which requires quite a good deal of work. We hire these men by the day; they are really paid by the hour. The articles that are made at our establishment resemble those figures before me in appearance. The commercial designation of the figures we produce is, imitation bronze figures. The men that are employed to make these figures are not professional sculptors, but professional chasers. They are skilled workmen—skilled mechanics. It is mechanical work.

On cross-examination by plaintiff's counsel, this witness further testified:

By Mr. CLARKE:

Q. You don't have any artists in your employ?—A. Well, they are not exactly artists; they are very skil'ful in their profession. We don't employ any professional sculptors, nor pay royalties to any. I have
50 bought models. I don't know whether the people I bought from would be considered as artists or not. The figures we produce we sell from 75 cents apiece to $40 a pair; we have some figures that we sell at $48 a pair, at wholesale, and we sell some small figures at 75 cents apiece. The figures at $48 a pair are about 36 inches in height—somewhat larger than the figure of David here, including base.

Defendant also produced as a witness THOMAS MILLER, who, being duly sworn, gave evidence tending to show that he was a brass molder, having his place of business at 34 West Third street, New York City; that he employs other men in his business; has had experience in molding statues and statuettes, such as those produced here in court. The witness further states: If I get such figures as those into my place, generally parts will be cut from it and molded in sections. They cut the pattern and we reproduce it. The material of the pattern, generally
51 in plaster, either comes from the studio of the modeler or designer, and we take the brass cast first from the plaster and reproduce it as many times as it necessary.

Q. From the one brass pattern?—A. Yes; it would last a hundred years if it was taken care of. We use this brass model as a pattern that we work from for as many copies as is wanted. We cut the model in sections. Generally we give it to a laborer or experienced man to mold it in sand. This work is generally done in French sand, and it must be an experienced man that handles it; for a figure like that weighs twenty pounds. A molder like me would get about thirteen or fourteen dollars for it for the workmanship that I should do upon it.

Q. When you reproduce it once?—A. Yes; so much a pound generally.

Q. Do you get as much every time you reproduce it?—A. Just the same; perhaps from sixty to seventy-five cents a pound from the brass cast. The people that we employ in the work are skilled mechanics, generally Frenchmen, who are skilled mechanics; and it is no use putting such work in any one's hands but them. I have done such work
52 myself, but I don't do it now. I hire men to do it when it is necessary. In molding these articles we use the same sand over and over again, only for the face of the work we generally put new sand on it and block it and prepare it generally for such work.

Being cross-examined by plaintiff's counsel, this witness further states:

By Mr. HARTLEY:

Q. What is the metal in a figure like that worth [referring to sample]? What is the value of it?—A. It is generally brass and it is bronzed over; some make it in real bronze, but mostly it is done in brass.

Q. What is it worth a pound?—A. Bronze is thirty-five cents and brass about thirty; the cost of making it is sixty to seventy-five cents a pound. A man in my business might get for making that figure, if it was twenty pounds, thirteen or fourteen dollars. That includes the

brass and the workmanship and everything for seventy-five cents a pound. We make these things from the designs of American
53 sculptors. The sculptors bring their models to me in plaster, and it is generally done in plaster.

The defendant also produced as a witness P. E. GUERIN, who, being duly sworn, gave testimony going to show that he was a bronze manufacturer at No. 24 West Third street, in the city of New York, and had been for twenty-five years in the business of making bronze statues and statuettes to a large extent.

The witness stated as follows: We do all kinds of work, bronze or brass, as it comes—figures similar to those that are now before me. We employ the best workmen that we can get—skilled workmen, the very best we have to have models to make them from. Sometimes the designer is the moulder. To design them the man has to get the idea out of his brain and put it on paper, and then from the paper he transfers it to the clay or plaster, wax, or anything; he puts his idea into the clay model, and that work is artistic work. I don't know where is the limit
54 to what you can call an artist or a mechanic. I don't know where to draw the line.

The men that we employ to mould we pay by the week or by the day. We keep the designer at work all the year around. These articles are moulded in sections sometimes, and sometimes they are moulded in one piece. When we put it in sections it is to facilitate the work. They can be produced from the same mould only once. The mould is made from sand. We have in our establishment these figures in brass and bronze both. In making a large number of reproductions we use a brass model or any other model. For making one I take a brass model. We call our goods artistic goods.

The defendant also produced as a witness JOHN S. LANGE, who, being duly sworn, testified that his occupation was that of gilding, silver-plating, and bronzing, and that he had been engaged in that business for thirty years, and that his place of business was 404 East 18th street, in the city of New York; that he had worked upon bronze statues and statuettes similar to those he saw before him, repairing where they had been
55 broken and restoring the color of them, regilding or bronzing or silver-plating them.

This witness further stated: I am familiar with the process of manufacture of these statuettes, and have been for the last twenty years. The making is in the first place from a drawing. I have got my knowledge of the way in which these articles were manufactured by working in establishments where this work is done—in factories. I have worked at casting and finishing myself, even up to the chasing and mounting.

Bronze statuettes are made by taking a drawing, and after this drawing making a model, either out of wax or clay, reproducing the same in plaster of paris or in brass or in lake. After that it is finished up to the highest mark of perfection; it is then sent to the foundry, where it is cast in brass or in bronze. After that it is filed to smooth it and bring every part of the cast to a complete state. If there are any holes they are closed up by a rivet or by screwing parts of wire into them.

After they are finished up in the way of chasing them—a term

56 that is used for certain branches of the business. This chasing is done by fine tools or by riffles—small, very fine tools that can enter in any part of the statue—then if the cast has been made in parts, the different parts are well fitted and mounted, and either brazed or screwed or riveted together. After that the pieces are finished in the desired colors. If they are to be antique bronze they can be brought similar to a bronze that is a hundred years old by the artistic touch of using chemicals, which produce the desired effect. Also by coating the brass or a poor bronze metal with a fine metal, such as pure gold, silver, or platina, or anything to bring out the different effects of those colors.

Q. "What are those men who do the work of casting called?—A. First-class mechanics.

Q. "And the workmen who work upon this labor who have the models furnished to them—what are they called?—A. First-class mechanics, skilled mechanics.

Q. "How many times is it possible to reproduce these same
57 articles?—A. That depends altogether upon the nature of the model.

Q. "Can there be a model made so as to reproduce any number of these articles?—A. Yes, sir.

Q. "How is it done?—A. If I had to it I should make a model of metal or brass, finish that up to perfection, and cast any number of them after that.

Q. "And that process would be purely mechanical?—A. Yes, sir."

No further evidence was offered on either side.

Whereupon the court charged the jury as follows:

SHIPMAN, *J.*:

GENTLEMEN OF THE JURY: The plaintiffs imported the articles, samples of which have been shown you, as statuary, and claim that they were properly dutiable at ten per centum ad valorem. The collector classified them as manufactures of copper, dutiable at forty-five per centum ad valorem. The plaintiffs appealed in due season from this assess-
58 ment, and the question for you to decide is whether the articles in question should have been properly classified as statuary.

The plaintiffs take the burden of proof, and must satisfy you that these articles are included in the definition of statuary which the statute gives, to wit: The professional productions of a statuary or of an sculptor only. The plaintiffs say that these are reproductions in bronze of the work of the sculptor, just as the Rogers groups, which are commonly sold, are reproductions of the idea as expressed in the original model of the artist; and that the artist who conceived and modeled in clay the David which is before you or the Gladiator was a sculptor, and that the model was his professional production; and that it is immaterial whether he retained the title to the clay model in his own name or sold the model to another to be reproduced.

And they further say that the test is whether these articles are mechanical reduplictions in bronze of the original designs of models of the sculptor. If they are reduplications of the original designs or models of the sculptor, then the plaintiffs say that they are professional productions; and
59 they say that the entire work, or substantially the entire work, of reproducing in bronze any original work of art which leaves

the hands of the sculptor in clay or in plaster is necessarily mechanical and not professional.

On the other hand, the defendant says that these are not professional, but are mechanical productions, and that some of them are simply small copies of old statues, such as the Venus de Milo, reproduced by the manufacturer, and that the statuary, or sculptor, as meant by the statute, is the man who conceives the idea, and not the manufacturer of the copies.

In regard to the other statues the defendant says that the designed has simply sold his idea which is wrought in clay or plaster, and the purchaser has reproduced, by mere mechanical means, the design which the sculptor or artist had originally made. The defendant says that the entire work done by the producer of the bronze statuettes is mechanical, and that there is nothing after it has left the hands of the original owner which can be called the original production of the artist.

60 These are the two arguments which respective parties submit to you. I shall leave it to you to decide the facts. And I further say that I do not see any difference between the terms "statuary" and "sculptor."

The defendant's requests to charge are, first, that in order to find a verdict for the plaintiffs the jury should be satisfied from the evidence that the imported articles were in fact the professional productions of a statuary or a sculptor only, and not mere copies, or reproductions thereof made by the manufacturer, or by the mechanics, or artizans in the employ of the manufacturer.

That I do not charge, because it seems to me not to present the real question in the case as it ought to be presented to the jury. It seems to me that it doesn't fairly present the question which I wish to submit to you.

The defendant requests the court to charge, second, that the evident intent of Congress in putting a lower rate of duty on statues which are professional productions of a statuary or sculptor only than on manu-

61 facturers of marble or metal is to encourage works of art by distinguishing between the productions of an artist and those of an artizan or mechanic. That is true.

Third. That the burden of proof is on the plaintiffs to satisfy the jury by a fair preponderance of evidence that the imported articles are in fact the professional productions of a statuary or a sculptor only; and unless the jury are so satisfied from such evidence the verdict should be for the defendant. Which is true.

Fourth. That if the jury find from the evidence that the imported articles were made, not by professional sculptors or statuaries or by their assistants under their direction, but were made by skilled workmen or mechanics in the employ of the manufacturer, then their verdict should be for the defendant. That I do not charge.

Mr PLATT. We *expect* to each of the refusals to charge our two requests, to wit, the first and fourth requests.

The COURT. I will say to you, gentlemen, before you go, that if these articles had been reproductions of the original designs in marble I

62 should have charged the request which the learned district attorney presented. The distinction is that these are reproductions in bronze, which reproductions from the clay or plaster in bronze must necessarily

be, to a certain extent, mechanical; and, therefore, owing to the fact that these are bronze and not marble articles, I decline to charge as directed by the learned district attorney.

The case was given to the jury, and after an absence of two hours a written inquiry was sent by the jury to the court, as follows: "Was the intent of the law passed by Congress in reference to duties on works of art to mean 10 per cent. ad valorem on original works of art and 45 per cent. ad valorem on copies of the originals?"

The court thereupon sent to the jury the following written reply or instruction:

The COURT. I do not think that such a distinction is to be inferred. The statute, in regard to 10 per cent., made it imperative that the works should be professional works of a sculptor or statuary only, whether they were copies or originals.

63 Counsel for the defendant excepted to such reply or instruction of the court.

And inasmuch as the exceptions, matters, and things aforesaid would not appear by the record, I have settled, allowed, and signed this bill of exceptions on the prayer of the said defendant by his counsel.

And it is ordered that the same be filed as a part of the record herein with like force and effect as if the same had been reduced to writing and signed and filed before the case was given to the jury.

Witness my hand at New York this 25th day of March, 1886.

N. SHIPMAN,
Judge.

64 (Endorsed:) U. S. 7519. U. S. circuit court, southern dist. of N. Y. Charles L. Tiffany versus Edwin A. Merritt, collector. Bill of exceptions. Stephen A. Walker, United States att'y, att'y for def't.

Due service of a copy of the within is hereby admitted. New York, , 188 . , att'y for pl'ff. To , att'y for pl'ff. U. S. circuit court. Filed April 3rd, 1886. Timothy Griffith, clerk.

65 *Assignment of errors.*

Supreme Court of the United States.

EDWIN A. MERRITT, PLAINTIFF IN ERROR,
vs.
CHARLES L. TIFFANY, DEFENDANT IN ERROR.

Afterwards, to wit, on the second Monday of October, in the same term, before the justices of the said court, at the Capitol in Washington, comes the said plaintiff in error by Stephen A. Walker, his attorney, and says that in the record and proceedings aforesaid there is manifest error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid in form aforesaid given was given for the said defendant in error against the said plaintiff in error, whereas by the law of the land the said judgment ought to have been given for the said plaintiff against the said defendant.